

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

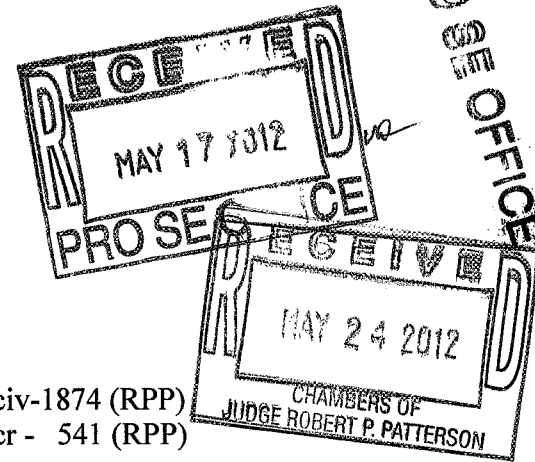
DANIEL B. KARRON

Petitioner,

-V.-

UNITED STATES OF AMERICA

Respondent.



11-civ-1874 (RPP)
07-cr - 541 (RPP)

Application for Motion to
Correct the Record of 11-civ-
1974 [2255 Motion to Vacate]

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/17/12

(1) Introduction

This application for a motion is to correct the record by docketing, under the appropriate docket (11-civ-1974) the Petitioner Karron's (admittedly primitive) motion practice briefs that are either miss-docketed under the underlying criminal docket (07-cr-541), mentioned in the docket, or not docketed at all. The first of the two missing briefs are Petitioner Karron's originating resubmitted brief and appendix containing two declarations extensively cited and quoted by the Government Respondent and this Court. For example, the Declaration of Goldberg was made part of the resubmitted originating brief, extensively cited in the Courts Opinion and Order, is not visible in the record. Key reply arguments, such as the argument regarding Brady Violation allegations not required to be raised in the direct appeal, and as of their very nature require expansions of the record, are addressed as matters of law in the Petitioner Karron's "Corrected Sur-Reply" brief.¹ Had this Court reviewed these arguments and

¹ Karron v. U.S.A. Corrected Sur-Reply 28 USC §2255 Page 22 of 31 ("(...8) Procedural Default Doctrine does not apply to Brady Claims. The procedural default doctrine applies only to claims that could have been raised at trial or on direct appeal. It does not apply to claims cannot be raised in a direct appeal and that require development of facts outside the trial record^[209]. The procedural default doctrine never bars a claim of ineffective assistance of counsel raised in a §2255 proceeding, even if that claim could have been, but was not, raised on direct appeal^[210] 209 Bousley v. U.S., 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998) 210 Massaro v. United States, 538 U.S. 500, 503-04, 123 S. Ct. 1690, 1693, 155 L.Ed.2d 714 (2003) [CITATIONS AS IN ORIGINAL BRIEF]

other omitted material points such as the Courts own contemporaneous comments on the Governments “Junk Auditing”², there is a very real possibility of a change of heart.

It is unfair and against the Interests of Justice and Judicial transparency to not correct the record. The lack of these two material documents in the docket effectively blocks any potential judicial review or reconsideration.

(2) Background Facts

(.1) The Petitioner Karron successfully initiated filed a motion for Habeas Corpus Relief (28 U.S.C. §§ 2255)^{3 4} and an originating Memorandum of Law⁵.

(.2) The Petitioner Karron applied to this Court to resubmit her Memorandum of Fact and Law. This application was granted^{6 7}.

² Karron v. U.S.A. Corrected Sur-Reply 28 USC §2255 Page 30 of 31 (...12) Trial Judge *sua sponte* expressed critical doubts about GX114

³ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 02/22/2011 87 Letter by Daniel B. Karron addressed to Dear Sirs from D.B. Karron dated 2/22/11 re: Enclosed is my Motion to Vacate under 28 USC 2255 form AO 243 (Rev 12/04) and attachments detailed below. I am presently completing my sentence from my conviction of violating Title 18 USC 666 from this court under case 07-cr-541 (RPP). As such, I am under sentence of this District Court. Exhibits attached. Application sent to Judge Patterson Chambers. (jw) (Entered: 03/01/2011)

⁴ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 02/22/2011 1 MOTION to Vacate, Set Aside or Correct Sentence (28 U.S.C. 2255). NO FURTHER ENTRIES. PLEASE SEE CRIMINAL CASE: 07-cr-541 (RPP) Document filed by Daniel B. Karron.(jw) (msa). (Additional attachment(s) added on 4/8/2011: # 1 Signature Page) (mt). (Entered: 03/22/2011)

⁵ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 03 /22/201112 MEMORANDUM OF LAW in Support re: 1 Motion to Vacate/Set Aside/Correct Sentence (2255). Document filed by Daniel B. Karron. (Attachments: # 1 Part 2, # 2 Part 3)(msa) (Additional attachment(s) added on 4/8/2011: # 3 Signature Page) (mt). (Entered: 03/22/2011)

⁶ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 04/28/2011 92 ENDORSED LETTER as to Daniel B. Karron addressed to Judge Robert P. Patterson from defendant Daniel B. Karron, dated April 28, 2011 at 13:37:21 Hours RE: I would humbly beg the court to submit a replacement 2255 Memorandum of Fact and Law, with three additional Declarations, in support of my 2255 motion to vacate my criminal conviction. I have prepared a motion to resubmit, and will resubmit it on along with the full documents MONDAY, May 2, 2011. ENDORSEMENT: Application granted. So Ordered. (Signed by Judge Robert P. Patterson on 4/28/2011); Also docketed in related Civil Case 11-cv-1874(RPP). (bw) (Entered: 04/29/2011)

⁷ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 04/28/2011 12 ENDORSED LETTER addressed to Judge Robert P. Patterson from D. B. Karron dated April 28, 2011 re: I would humbly beg the court to submit a replacement 2255 Memorandum of Fact and Law, with three additional Declarations, in support of my 2255 motion to vacate my criminal conviction. I have prepared a motion to resubmit, and will resubmit it on along with the full documents MONDAY, May 2,2011. ENDORSEMENT: Application GRANTED. SO ORDERED. (Signed by

- (.3)Petitioner Karron resubmitted this Memorandum and two additional declarations on signed on April 28, 2011
- (.4)The Government Respondent requested and the Court was granted⁸ additional time to reply to the re-submitted papers as submitted.
- (.5)The Government Respondent did indeed reply to these resubmitted papers and the responsive brief and appendix was docketed⁹.
- (.6)It does not appear that the resubmitted original brief was docketed. This is the document to which the Government and this Court has responded upon.
- (.7)The court endorsed a letter from Petitioner Karron requesting additional time and pages for which to submit a reply brief to the submitted and docketed Brief in Opposition^{10 11}.

Judge Robert P. Patterson on 4/28/2011) (jmi); ***Also docketed in related Criminal Case 07-cr-541(RPP).*** Modified on 4/29/2011 (bw). (Entered: 04/29/2011)

⁸ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 05/03/2011 13 ENDORSED LETTER: addressed to Judge Robert P. Patterson from Christian R. Everdell dated 4/29/2011 re: The Government requests that the Court amend its earlier order so that the Government's 60 day response period begins on May 2, 2011, the date the amended memorandum is to be filed. Under this proposed schedule, the Government's response would be due on Friday, July 1, 2011. The Government, of course, consents to a similar extension for the petitioner's 30-day period to file his reply.. ENDORSEMENT: Application granted. So Ordered. (Signed by Judge Robert P. Patterson on 5/2/11) (js) (Entered: 05/03/2011)

⁹ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 07/16/2011 94 FILING ERROR - ELECTRONIC FILING IN NON-ECF CASE - MEMORANDUM in Opposition by USA as to Daniel B. Karron re MOTION to Vacate under 28 U.S.C. 2255. (Attachments: # 1 Exhibit A, # 2 Affidavit Rachel Ondrik)(Everdell, Christian) Modified on 7/19/2011 (ka). (Entered: 07/16/2011) 07/19/2011 ***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF CASE ERROR. Note to Attorney Christian Everdell as to Daniel B. Karron: to MANUALLY RE-FILE Document Memorandum of Law in Oppositon to Motion, Document No. 94. This case is not ECF. (ka) (Entered: 07/19/2011)

¹⁰CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 09/15/201119 ENDORSED LETTER addressed to Judge Robert P. Patterson from D. B. Karron dated 9/13/2011 re: Request for short additional extension from Wednesday Sept 15 to Monday Sept 20. We humbly request additional pages totaling 25 pages, exclusive of Tables of Contents and Authorities in order to adequately rebut each point raised in the Governments reply brief. ENDORSEMENT: The application on time for submission is granted. Any submission shall not be more than 25 pages. So Ordered. (Brief due by 9/20/2011.) (Signed by Judge Robert P. Patterson on 9/14/2011) (lmb) (Entered: 09/15/2011)

¹¹ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 09/15/201197 ENDORSED LETTER as to Daniel B. Karron addressed to Judge Robert P. Patterson from Attorney D. B. Karron dated September 13, 2011 re: Request for short additional extension from Wednesday Sept 15 to Monday Sept 20; Request for additional pages totaling 25 pages, exclusive of Tables of Contents and Authorities in order to adequately rebut each point raised the Governments reply brief. I am answering pro se and with limited legal editing resources. ENDORSEMENT: The application on time for submission is granted. Any submission shall not be more than 25 pages. So Ordered. (Signed by Judge Robert P. Patterson on 9/14/2011) [*** Refer to Civil Case 11-cv-1874(RPP) also ***](bw) (Entered: 09/15/2011)

- (.8) This document was filed and a corrected version filed as a “CORRECTED SUR_REPLY ...”¹²
- (.9) This document was not mentioned in the Civil Docket for CASE #: 1:11-cv-01874-RPP
- (.10) This document was mentioned in the Criminal Docket for case #: 1:07-cr-00541 but not numbered on Jan 1, 2012.¹³
- (.11) The Petitioner made two requests letter requests for the ‘CORRECTED SUR-REPLY to be docketed. One of these letters was docketed and posted on PACER¹⁴
- (.12) The government responded to this “CORRECTED SUR-REPLY.”¹⁵

At this point, it appeared that the matter was fully briefed even though not fully docketed.

¹² CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 01/05/2012 MOTION to Vacate under 28 U.S.C. 2255 Document filed by Daniel B. Karron. (jw) (Entered: 01/11/2012)

¹³ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 01/05/2012 MOTION to Vacate under 28 U.S.C. 2255 Document filed by Daniel B. Karron. (jw) (Entered: 01/11/2012)

¹⁴ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 ENTRY 02/10/2012 23 Letter addressed to Judge Robert P. Patterson from D.B. Karron, Ph. D. dated 2/8/2012 re: Request to have the Court post the docketed copy of plaintiffs 2255 corrected sur-reply papers as a downloadable PACER document. Document filed by Daniel B. Karron.(msa) Modified on 2/21/2012 (jcs). (Letter is Public View as per chambers of (RPP)) (Entered: 02/15/2012)

¹⁵ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-1 02/01/2012100 RESPONSE in Opposition by USA as to Daniel B. Karron re MOTION to Vacate under 28 U.S.C. 2255. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Kwok, Chi) (Entered: 02/01/2012)

The Court issued an Opinion and Order^{16 17} and an Amended Opinion and Order^{18 19} which made references to the Petitioners Resubmitted Memo and possibly ignored the “Corrected Surreply”. The court may have ruled on a critically incomplete briefing. Key material points raised in the “Corrected Sur-Reply” were omitted the Courts Opinion and Order.

¹⁶ 05/03/2012 106 OPINION AND ORDER as to Daniel B. Karron re: MOTION to Vacate under 28 U.S.C. 2255 filed by Daniel B. Karron. For the reasons set forth above, Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is denied. No hearing is necessary, as the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief. 28 U.S.C. § 2255; *Armienti v. United States*, 234 F.3d 820, 822-23 (2d Cir. 2000). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). As the Petitioner makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. It IS SO ORDERED. (Signed by Judge Robert P. Patterson on 5/3/12)(jw) (Entered: 05/03/2012)

¹⁷ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 05/03/2012 225 OPINION AND ORDER #101760: For the reasons set forth above, Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is denied. No hearing is necessary, as the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief. 28 U.S.C. § 2255; *Armienti v. United States*, 234 F.3d 820, 822-23 (2d Cir. 2000). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). As the Petitioner makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. (Signed by Judge Robert P. Patterson on 5/3/2012) Copies Faxed By Chambers. (lmb) Modified on 5/7/2012 (ft). (Entered: 05/03/2012)

¹⁸ CRIMINAL DOCKET FOR CASE #: 1:07-cr-00541-RPP-105/04/2012 107 AMENDED OPINION AND ORDER as to Daniel B. Karron. For the reasons set forth above, Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is denied. No hearing is necessary, as the motion and the files and records of the case conclusively show that the [Petitioner] is entitled to no relief. 28 U.S.C. § 2255; *Armienti v. United States*, 234 F.3d 820, 822-23 (2d Cir. 2000). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). As the Petitioner makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. (Signed by Judge Robert P. Patterson on 5/4/2012) [*** Also docketed in related Civil Case, 11-cv-1874(RPP), see Doc.#26. ***] (bw) (Entered: 05/07/2012)

¹⁹ CIVIL DOCKET FOR CASE #: 1:11-cv-01874-RPP 05/04/2012 26 AMENDED OPINION AND ORDER #101760: For the reasons set forth above, Petitioner's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is denied. No hearing is necessary, as the motion and the files and records of the case conclusively show that the [Petitioner] is entitled to no relief. 28 U.S.C. § 2255; *Armienti v. United States*, 234 F.3d 820, 822-23 (2d Cir. 2000). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). As the Petitioner makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. (Signed by Judge Robert P. Patterson on 5/4/2012) Copies Faxed By Chambers. (lmb); [*** Also docketed in related Criminal Case, 07-cr-541(RPP), see Doc.#107. ***] Modified on 5/7/2012 (bw). Modified on 5/8/2012 (ft). (Entered: 05/04/2012)

The Petitioner humbly requests that: the copy, as served on the Government and the Court, of the:

1) Petitioners Resubmitted Originating Brief and Appendices be docketed to 11-civ-1874 and the.

2) Petitioners Corrected Sur-Reply brief docketed be to 11-civ-1874

such that that 11-cv1872 (2255 Motion to Vacate) docket contains all the files and records of the case and as such are available for review on this case.

Should the Courts copies be lost or otherwise unavailable, the Petitioner can re-forward copies to both the Government and the Court. Alternatively, a copy of the Resubmitted originating brief is available online at <http://www.scribd.com/doc/93469189/2255-Resubmit-Memorandum-of-Fact-and-Law-16-FINAL>. A copy of the 'CORRECTED SUR-REPLY' is available online at <http://www.scribd.com/doc/93781306/2255-Sur-Reply-Memorandum-of-Fact-and-Law-21-2-as-Served-Again-Stamped>

Respectfully Submitted by



D. B. Karron
Petitioner, *pro se*
348 East Fulton Street,
Long Beach, New York 11561
E-Mail to drdbkarron@gmail.com
Facsimile +1 (516) 308 - 1982
Voice +1 (516) 515 - 1474

17 May 2012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL B. KARRON

Petitioner,

-V.-

UNITED STATES OF AMERICA

Respondent.

11-civ-1874 (RPP)

07-cr - 541 (RPP)

DECLARATION OF
SERVICE

I, D. B. KARRON, declare under penalty of perjury that I have served a copy of the attached Motion to Amend the Record upon :

Mr. Christian R. Everdell and
Mr. Steven Kwok
Assistant United States Attorney
Terrorism and International Narcotics Unit
Southern District of New York

whose physical address is

One St. Andrews Plaza,
New York, New York, 10007

by e-mail to

Christian.Everdell@usdoj.gov
Steve.Kwok@usdoj.gov

Dated: Long Beach, New York
17 May 2012



D. B. Karron
Petitioner, *pro se*
348 East Fulton Street,
Long Beach, New York 11561
E-Mail to drdbkarron@gmail.com
Facsimile +1 (516) 308 - 1982
Voice +1 (516) 515 - 1474